UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,117	06/16/2005	Ryuzo Ueno	1691-0208PUS1	8980

2292 7590 01/08/2009
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER	
CHAWLA, JYOTI	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
01/08/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/539,117	UENO ET AL.	
	Examiner	Art Unit	
	JYOTI CHAWLA	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *9/30/2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,6,7 and 9-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,6,7 and 9-11* is/are rejected.

7)☒ Claim(s) *11* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicants' submission of 9/30/2008 has been entered. Claims 1, 3, and 7 have been amended, claims 2, 4-5 and 8 have been cancelled and claims 9-11 have been added. Claims 1, 3, 6-7 and 9-11 are pending and examined in the office action.

Specification

Applicant's submission dated 9/30/2008 of amendment to the abstract of the invention has been entered. The applicants have made the abstract one paragraph as required. No new matter has been introduced.

Claim Objections

Claim objections made in the previous office action for the use of abbreviation "wt %", have been withdrawn based on applicant's amendments dated 9/30/08.

Claim 11 has been objected for minor informality of a typographical error:
Claim 11 recites the term "oil adsorptivity", however the disclosure states "oil absorptivity". Correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is once again rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
Claim 7 recites a phrase "Japanese sweets" in line 2 of the claim, however, it is unclear as to what sweets or foods are encompassed by the term. It is not evident from the claim, as recited whether "Japanese sweets" includes foods containing a sweetener

made in Japan or sold in Japan or consumed in Japan or consumed by Japanese consumers or something else. Correction and /or clarification is required. For the purpose of examination "Japanese sweets" will be regarded as any sweet that has any relationship with Japan, including but not limited to the relations described above.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1) Rejection of Claims 1-8 under 35 U.S.C. 102(b) as being anticipated by Bucke et al. (US 4587119), have been withdrawn based on applicant's amendments.

2) Claims 1, 3, 6-7 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sugimoto (US 3957976).

Regarding claim 1, Sugimoto teaches a sweetener mixture-containing food which comprises a sweetener mixture of maltitol, and sucrose (i.e., cane sugar) (Abstract, Column 1, lines 48-60, Column 5, lines 5-10). Regarding the mixing ratio of maltitol to cane sugar, Sugimoto teaches sucrose 2:maltotol 1(Column 10, line 53) which falls in applicant's recited range of maltitol to cane sugar of 15:85 to 60:40.

Regarding claims 3 Sugimoto teaches of foods which contain the sweetener mixture of maltitol and cane sugar in an amount of 15 to 20% (Column 10, line 54) which falls in the recited range of 5 to 60 wt %.

Regarding claim 6, Sugimoto teaches of a sweetener mixture-containing food wherein the cane sugar (i.e., sucrose) or table sugar which is typically in the form of granulated or powdered composition as instantly claimed (Column 7, Example 2, where dry sucrose is mixed with sugar alcohol), as instantly claimed.

Regarding claims 7 and 9, Sugimoto teaches that the sweetener mixture-containing foods can be hard candies or sweets, jams, preserves jellies, caramel cake sponge cake, pound cake (i.e., baked goods) and condensed milk etc (Column 6, lines 10-15), which fall in applicant's recited group of foods.

Therefore, claims 1, 3, 6, 7 and 9 are anticipated by Sugimoto.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

A) Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto (US 3957976) in view of Kawashima et al (US 5583215), hereinafter Kawashima.

Sugimoto has been applied under 35 USC 102(b) to reject claims 1, 3, 6, 7 and 9 above.

Sugimoto teaches sweetener mixture comprising sucrose or cane sugar with maltitol in the recited ration of the applicant as discussed above. Sugimoto teaches that maltitol can either be in a solution or a powder form (Column 4, line 65 to Column 5, line 23). Sugimoto however is silent as to the apparent density, particle size and oil absorption characteristics as recited in claims 10-11. Kawashima teaches crystalline mixture containing maltitol wherein the apparent specific gravity of 0.65 to 0.75 and oil absorptivity of 7-17% for maltitol mixture having particle size from 50 mesh to 20 mesh (Abstract and Column 3, lines 30-41). Thus maltitol powders in the recited size range and specific gravity and oil absorptivity range were known and available at the time of the invention. Therefore, it would have been a matter of routine determination for one of ordinary skill in the art to modify Sugimoto and use the maltitol powder as taught by Kawashima. One of ordinary skill would have been motivated to do so at least for the reason of (a) the crystalline mixture solid containing maltitol having a larger particle size or apparent density lower than 0.65 as taught by Kawashima is bulky in its volume because of its small apparent specific gravity and will occupy greater volume during storage, transportation etc, and also the powder of maltitol with lower apparent density or specific gravity tends to scatter easily as it is light in weight and thus is more difficult to work with.

Therefore claims 10 and 11 as recited are unpatentable over Sugimoto in view of Kawashima.

Response to Arguments

Applicant's arguments with respect to claims 1, 3, 6-7, 9-11 have been considered but are moot in view of the new ground(s) of rejection necessitated by applicant's amendments.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JC/
Examiner
Art Unit 1794

/JENNIFER MCNEIL/
Supervisory Patent Examiner, Art Unit 1794